

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MISSOURI COALITION FOR THE
ENVIRONMENT FOUNDATION,

Plaintiff,

v.

GINA MCCARTHY, Administrator of the
United States Environmental Protection
Agency; and THE UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,

Defendants.

No. 2:16-cv-04069-NKL

ORDER

Pending before the Court is the Parties' Joint Motion for a Consent Decree, [Doc. 29].

For the following reasons, the motion is granted.

I. Background

Under the Clean Water Act, 33 U.S.C. § 1251 et seq., states must develop water quality standards for all navigable bodies of water within their jurisdiction. *See* 33 U.S.C. § 1313(a). Section 303(c)(3) of the Act requires states to review these water quality standards at least once every three years, through a process known as a “triennial review,” and submit the results of this review to the U.S. Environmental Protection Agency. 33 U.S.C. § 1313(c)(1). EPA must then evaluate any new or revised state standards to ensure compliance with the CWA. 33 U.S.C. §§ 1313(c)(2)(A), (c)(3). If EPA disapproves the standards, it must notify the state within 90 days

and specify changes for the state to make. 33 U.S.C. § 1313(c)(3). The state then has an additional 90 days to revise its standards. *Id.* If it fails to do so, EPA “shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved.” 33 U.S.C. § 1313(c)(4).

In November 2009, Missouri submitted the results of its triennial review to EPA, and as part of this submission Missouri proposed nutrient and chlorophyll water quality criteria for hundreds of Missouri lakes. EPA approved the proposed criteria for several of these waters. However, in a letter dated August 16, 2011, EPA disapproved Missouri’s standards for the lakes listed on Table G of Mo. Code Regs. 10 § 20-7.031. EPA reached this conclusion, in part, because it determined that the lake nutrient criteria were not based on sound science and because the state had not shown its approach would protect designated aquatic and recreational uses. Missouri did not revise its nutrient criteria in the 90 days thereafter. Moreover, as of today’s date, EPA also has not promulgated nutrient criteria for the Table G lakes.

Plaintiff, the Missouri Coalition for the Environment (MCE), brought a citizen suit pursuant to 33 U.S.C. §1365(b)(2). According to its complaint, because EPA did not “promptly” publish revised or new numeric nutrient criteria for Missouri lakes, the agency has failed to perform a non-delegable duty under Sections 303(c)(3) and (c)(4)(A).

The Parties reached an agreement and drafted a consent decree on December 1, 2016 and request that the Court approve the Consent Decree.

II. Discussion

A district court is required to review a proposed consent decree for fairness, reasonableness, and consistency with the governing statute. *U.S. v. Union Elec. Co.*, 132 F.3d

422, 430 (8th Cir. 1997). “The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.” *United States v. Bechtel Corp.*, 648 F.3d 660, 666 (9th Cir. 1981).

Upon review of the modified Consent Decree attached to this Order, the Court finds that it is fair, reasonable, and consistent with the Clean Water Act’s goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation’s waters while also recognizing the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution. *See* 33 U.S.C. § 1251. The Consent Decree is the result of arm’s length negotiations, is approved by both Parties, will enhance EPA’s compliance with and oversight of the Clean Water Act, and appropriately reflects EPA’s failure to promptly prepare and publish water quality standards in accordance with the requirements of the Clean Water Act.

The Parties’ proposed Consent Decree requires EPA to sign a notice of proposed rulemaking by December 15, 2017 that “proposes new or revised water quality standards addressing EPA’s 2011 disapproval of Missouri’s numeric nutrient criteria for lakes.” [Doc. 29-1, pp. 4–5]. It also requires EPA to sign a notice of final rulemaking regarding EPA’s proposed water quality standards by December 15, 2018. *Id.* The Consent Decree includes a provision addressing potential changed circumstances: the proposed and final rulemaking notice requirements shall not apply if, before either of those dates, Missouri submits revised water quality standards that address EPA’s disapproval and EPA approves those revised standards. *Id.*

Finally, although the Consent Decree resolves all claims in the Complaint, it does not “inhibit or otherwise affect the right of MCE or any person, including any person not a party to the Consent Decree, to challenge final water quality standards promulgated or approved by EPA or any other final action taken by EPA, once such final action is taken.” [Doc. 29, p. 2]. EPA will

pay Plaintiff's attorney's fees accrued thus far and, if EPA does not take the actions described in the Consent decree, Plaintiff may seek additional fees in connection with any disagreement concerning interpretation or performance.

The Consent Decree is fair, reasonable, and consistent with the goals of the Clean Water Act. Therefore, the Court enters and adopts the Consent Decree and the Parties' Joint Motion to Enter Consent Decree, [Doc. 29], is granted. A signed Consent Decree will be filed contemporaneously with this Order.

III. Conclusion

For the reasons set forth above, the Parties' Joint Motion to Enter Consent Decree, [Doc. 29], is granted.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: December 7, 2016
Jefferson City, Missouri